

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JARYL ELLIS, MICHAEL HUNTER,)
TIFFANY JOHNSON, PAUL ZEIGER, and)
AARON DELANEY,)

8:10CV3222

Plaintiffs,)

MEMORANDUM AND ORDER

v.)

ROBERT P. HOUSTON, et. al.,)

Defendants.)

Defendant Chad Miles has moved to amend his answer to assert qualified immunity as an affirmative defense. (Filing No. 104). The plaintiffs object to the motion to amend as untimely.

The plaintiffs filed their lawsuit on November 10, 2010. Miles was not initially named as a defendant, and was not served until May 16, 2011. The Nebraska Attorney General's Office entered an appearance as counsel for defendant Miles on June 3, 2011, but was granted leave to withdraw its representation of Miles on June 27, 2011. An answer was filed on behalf of defendant Miles on July 6, 2011 by his current counsel of record.

The defendants represented by the Nebraska Attorney General's Office filed a motion for summary judgment on November 14, 2011. Their motion seeks dismissal of plaintiff's claims based on the defense of qualified immunity. Defendant Miles moved to amend his answer to raise the qualified immunity defense on December 8, 2011.

Defendant Miles' proposed motion to amend does not violate any specific deadline in any progression order entered after Miles was added as a party. There is nothing of record indicating additional discovery will be required if defendant Miles is now permitted to raise the qualified immunity defense, and allowing his proposed amendment will cause only a minor delay relative to the length and history of this case to date. Considering the totality of this file, particularly in the context of avoiding piecemeal or incomplete determinations of the parties' claims and defenses, the court finds defendant Miles' motion to amend should be granted.

Accordingly,

IT IS ORDERED:

- 1) Defendant Miles' motion to amend, (filing no. 104), is granted. Defendant Miles' amended answer, a copy of which is attached to his motion, shall be filed on or before December 20, 2011.
- 2) Any motions for summary judgment between the plaintiffs and defendant Miles shall be filed on or before December 22, 2011.
- 3) On or before January 11, 2012, the plaintiffs shall file their responses to the pending motion for summary judgment filed by defendants Dennis Blakewell, Timothy Furby, Chad Haney, Robert P. Houston, Barry Loock, Sean Runge, Cathy Sheair, Joseph Staley and Kevin Stoner, (filing no. 98), and any timely motion for summary judgment hereafter filed by defendant Miles.
- 4) Defendant Miles shall have until January 11, 2012 to respond to any motion for summary judgment filed by the plaintiffs.
- 5) As to any and all summary judgment motions filed, any reply shall be filed on or before January 17, 2012.
- 6) The pretrial conference is continued, and will be held before the undersigned magistrate judge in chambers on March 20, 2012 at 9:00 a.m.
- 7) The trial of this case is continued, and is set as the **first** civil case to be tried before the Honorable Richard G. Kopf on April 2, 2012. This civil case setting is subject to any criminal case trial setting for the week of April 2, 2012.

DATED this 17th day of December, 2011.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge